

**PLANNING AND ZONING COMMISSION  
MINUTES  
PUBLIC HEARING / GENERAL MEETING  
JANUARY 20, 2015**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:  
Cameron, DiDonna, Olvany, Voigt, Sini, Jr.

STAFF ATTENDING: Ginsberg  
RECORDER: Syat  
Channel 79

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Chairman Cameron opened the meeting at 8 P.M. and read the first agenda item:

**PUBLIC HEARING**

**Land Filling & Regrading Application #340, Michael & Charlotta West, 45 Swift's Lane.** Proposal to excavate, fill and regrade in order to accommodate a replacement house, pool, and driveway, and to perform related site development activities. The subject property is located on the south side of Swift's Lane approximately 1,300 feet east of its intersection with Ring's End Road, and is shown on Assessor's Map #50 as Lot #9 in the R-1 Zone. *TO BE OPENED AND IMMEDIATELY CONTINUED TO FEBRUARY 3, 2015 AT 8PM.*

Chairman Cameron noted that this item will be opened tonight and immediately continued to February 3, 2015 at 8pm in Town Hall. She then read the next agenda item:

**Continuation of Public Hearing regarding Proposed Amendment to the Darien Zoning Map (COZM #2-2014), Special Permit Application #246-B/Site Plan #251-B, Land Filling & Regrading Application #184-B/lot line adjustment, Sun Homes Darien, LLC, 36, 42 (formerly 0), and 48 Wakemore Street.** Proposing to establish the Designed Community Residential (DCR) overlay zone on parcels totaling approximately 2.49+/- acres, and razing the existing three structures on those properties and constructing ten new structures containing fourteen market rate units and two affordable units to become Kensett II, and performing related site development activities. *PUBLIC HEARING OPENED 10/28/2014. DEADLINE TO CLOSE PUBLIC HEARING IS: 1/20/2015 UNLESS EXTENSION OF TIME IS GRANTED BY APPLICANT.*

Attorney Bruce Hill was present of behalf of the applicant so that he would address comments made regarding Kensett Phase I as well as the comments presented by Wilder Gleason at the last public hearing. He confirmed that the request herein is to extend the DCR Zoning District by 2.49 acres on the southeast of the Kensett I property. It would essentially be an expansion of Kensett Phase I. They are proposing to construct 14 market-rate units and two below market-rate units as required by the Town's Inclusionary Zoning Regulations. He said it is important for the Planning & Zoning Commission to focus on the Kensett II project as well as the appropriate standards for approval, rather than any issues or concerns with Kensett Phase I. Ms. Cameron confirmed that the public hearing tonight is on Kensett Phase II and it may be more appropriate at a future date to have a separate proceeding on issues related to Kensett I. Mr. Hill did not believe it was necessary to

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address those issues separately. Ms. Cameron said that one issue will be the 3,900 square feet maximum as allowed in the Zoning Regulations, not other issues related to Kensett I.

Mr. Hill confirmed that the neighbor comments received so far are generally in three categories: size of the units; the fact that the project is age-targeted; and the Wakemore Street drainage system. He then mentioned that the full Planning & Zoning Commission resolution for Kensett Phase I is in the record for this matter and that resolution contains the language of the DCR Regulations, which was adopted by the Planning & Zoning Commission and includes Section 575. The original intentions remain. The adopted resolution by the Commission and the Zoning Regulations have been met in Kensett Phase I as the average size of the units does not exceed 3,900 square feet. Both the resolution and the Regulations are silent on the number of bedrooms and bathrooms allowed. He then distributed a square footage analysis which was two pages. Mr. Sini asked for a definition of square footage. Mr. Hill said that the definition is based on the first two stories. He said that thus far, they have 24 Certificates of Occupancies and Certificate of Zoning Compliance. Mr. Olvany asked when they filed the Condominium Association Homeowners Association plan for Kensett Phase I. Mr. Hill said that there is no requirement that one be filed with the State of Connecticut. Mr. Hill mentioned that one issue which has arisen is whether Kensett Phase I is age-targeted. He said that this has been dealt with in the past. The original intent is the same but market forces will control who buys the condominiums. Buyers may want different floor plans. He said that Kensett I is now a mix with many empty-nesters and six of the units have elevators, which is an option for any purchaser. Kensett I has turned out to be a mix of some families, some young couples and some mixed generational situations. He said that of the 49 units now under contract or are closed, there has been a net increase of 4 students (although there are more than 4 students there, some of them have already gone to Darien schools and moved from other parts of Darien). Mr. Hill then distributed a handout related to number of school children. Mr. Hill believed this is consistent with the September 2013 update which he gave the Planning & Zoning Commission. He then distributed another handout and noted that there is no age restriction requirement in either the Zoning Regulations or the Commission's adopted resolution.

Mr. DiDonna said he watched the DVD distributed as part of last meeting, he said it was striking on TV. This was the CD prepared by Wilder Gleason. Mr. DiDonna said that he is puzzled by the intent of the developer as the project was age-targeted. Mr. Hill said that the information about age-targeting is consistent with the Zoning Regulations and the resolution. Mr. DiDonna asked what changed from that time to the present. Mr. Hill then referred to a January 12, 2015 email from Mr. Dale, which referred to changes in the market. Mr. DiDonna asked what they expect from Kensett II. Mr. Hill responded that the effort will be to make Kensett II essentially part of Kensett I, which will probably be a mix of owners of all ages. Mr. Hill confirmed that there will be a small number of children which will result from Kensett II. Mr. DiDonna then asked whether he is looking for categorical representation on the future that it will be age-targeted. Mr. Hill confirmed that the Zoning Regulations have no reference to age and no requirements for projects in this zone to be age-restricted. Mr. Sini said that if someone is downsizing and moving from another part of Town, the Commission must think about the bigger picture. Ms. Cameron said that the original intent was the desire for empty nester housing. The resolution did not identify what age-targeted meant. Mr. DiDonna asked whether the Commission could take that up as part of Kensett II. Mr. Hill said they are only asking to expand the DCR Zone, which does not address age restriction and that their proposal is not to age restrict the project. Mr. Olvany said that age-targeted is a common real estate term and that elevators are much more common nowadays than they were even seven years ago.

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Mr. Hill then said that the third area of concern during the previous public hearings has been drainage and stormwater management. He said on a recent Saturday, Professional Engineer Joe Canas hired by the Town, met with neighbors out in the field. Ms. Cameron asked if there is a maintenance log from Kensett Phase I. Mr. Hill said he would have to check on that. He confirmed that the letter to Phil Toohey from 2007 notes what they agreed to with the neighbors.

Professional Engineer Joe Canas said that he has been retained by the Planning & Zoning Commission and Environmental Protection Commission to review this application. He referred to his October 16, 2014 letter with his comments. He noted that updated plans were dated January 2, 2015 and he met with the neighbors on January 10, 2015. In response to all of that, he submitted two letters for the record. The first was a letter dated January 15, 2015 regarding Kensett Phase II. A subsequent letter dated January 16, 2015 was submitted with his field observations. In response to a question, Mr. Canas noted that the sumps in the catch basins are established in order to catch debris. He confirmed that there are no Kensett II stormwater connections to Kensett I. He said that five units on the east side of the property might go to a rain garden on Kensett I. He mentioned Kensett II infiltration and permeable pavement with overflow. In response to a question, Mr. Canas said that there would be no adverse impact if the systems were properly maintained. Mr. DiDonna then asked about flooding which has occurred in the past at 24 Wakemore Street. Mr. Canas responded that this flooding has been anecdotal but, one could see where the water marks are. This water could have been to six feet high. Mr. Canas noted that in October 2007 a culvert was blocked and this confluence of events was highly unusual. He said the best way to respond to that in the future is that before any forecasted storms, someone should check the culvert to ensure there is no blockage. He acknowledged that this is the railroad culvert by the railroad in the northwest corner of the Kensett property, and is easily accessible by the public. Ms. Cameron asked whether the Kensett II stormwater is separate from Kensett I. Mr. DiDonna asked whether the establishment of Kensett II would worsen any flooding either on site or off site. Mr. Canas said that Kensett II would not worsen flooding, either on or off site, provided the stormwater management system is maintained. It will not exacerbate existing conditions. There is a very large contributing water shed in the main constraint is the culvert under the railroad.

Mr. Canas then reviewed his January 16, 2015 memo. He suggested that the roof leaders be put into the infiltration system. Mr. DiDonna asked whether there was any relevance of paving Wakemore Street. Mr. Canas responded that it may help the catch basins function better if the road is properly crowned and paved. Mr. Hill mentioned that the developers of Kensett are willing to re-pave Wakemore Street and that the last coat of pavement will be 1 to 1 ½ inches. Mr. Canas continued with his recommendations and recommended that the entire stormwater management system be videotaped to ensure that there are no blockages. Mr. Olvany then referred to a question from the neighbors regarding the design of storm frequency for the systems on site. Mr. Canas responded that ConnDOT plans for 10 year storms. This system that Kensett has designed is closer to a 25 year storm. Mr. Olvany then asked about the homeowners association. Mr. Hill responded that there would be a Board President of the homeowners association and a Board structure. He acknowledged that stormwater management is important and that the homeowners association would need to be responsive to that. Mr. Canas also recommended that two maintenance plans (one for Kensett I and one for Kensett II) be combined into a single document. He acknowledged that the Commission cannot add other conditions to the Kensett I project since it has already been approved and is under construction. Mr. Hill added that Kensett I and Kensett II will essentially

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function as a unified development. Mr. DiDonna asked if the two systems would be managed together. Mr. Hill said the conservation easement will be merged into one easement area as it does not make sense to have two separate conservation easements. Ms. Cameron then asked if the affordable units are considered on site or off site and who would manage the stormwater management system for the affordable units. Mr. Hill responded that these are both good questions. Ms. Cameron also asked who would maintain the plantings and yard around the affordable units. Mr. Hill responded that that could possibly be the affordable housing units owners. They are not anticipated to be part of the Kensett Condominium Homeowners Association, rather those two separate units would have no rights to the Kensett amenities such as the clubhouse and the pool. However, Mr. Hill said he would get back to the Planning & Zoning Commission regarding that issue. Mr. Sini mentioned, for clarity, that the two “affordable” units are not really considered affordable per the State Statutes, rather they are below market-rate units.

At about 9:10 pm., professional engineer John Watson from Insite Engineering said that he has addressed Mr. Canas’ comments. With regard to Kensett phase 1, he said that he looked at the pipes near the south property line. The area behind units 24-29 was re-piped into Kensett 1 between units 23 and 24. The infiltration system along the south property line, Cultecs underground, a treating runoff from units 9-14 and 21-23. These are behind units 13, 14, and 21 near 24 Wakemore Street. They are offering this as a solution, although the area is already planted. Mr. Hill noted that a contractor for Kensett 1 tied in the drainage system, although they did not intend to tie in. This solution would be invasive, and would not make sense. Mrs. Cameron asked whether the roof leaders are tied into the Wakemore Street drainage system, which connects to Kensett 1. It was noted that the Planning and Zoning Commission plan from 2007 does not show a yard drain or roof drains. The Planning and Zoning Commission approved the concept of drainage trunk line. Mrs. Cameron wondered whether the drain pipe for three buildings and maybe unit 23 could be tied in. Mr. Voigt asked about what the Cultec units overflow into, and asked whether this delay would make the peak worse. Mr. Watson replied that it would make the peak worse. Mr. Canas said that he concurs with Mr. Watson. Mr. Canas said that infiltrating the roof leaders could result in simultaneous peaking.

At about 9:20 p.m., Mike Galante of FP Clark Associates said that he wrote a letter dated October 22, 2014. He noted that Kensett 1 went before the State Traffic Commission (STC). STC is now OSTA. Kensett 2 will need OSTA Certificate Process, which is an Administrative decision process. They cannot get a Building Permit until OSTA approves it. Mr. Galante said that he looked at traffic and other issues. He said that there needs to be more detail on the texture and gating of the emergency driveway. There should also be no parking in front of the emergency gate. A “No Standing” sign would be appropriate. Any relocated parking must meet Town Zoning Regulations. Mr. Galante noted that new landscaping near Kensett 1 may impact sight lines. These are two bushes noted in his letter of October 22, 2014. He did confirm that parents do park vehicles near the bus stop at the corner of Wakemore Street and Hoyt Street. Wakemore Street is a private road, and Mr. Galante said that he does not have a specific solution for this, however, he noted that this is only a “20-minute problem”, which occurs only on school days.

Mr. Sini noted that although there are only 22 children now, this could jump to 35. Mr. Galante said that the new Kensett 2 would be about nine trips per peak hour, on top of Kensett 1 traffic. The typical estimate is .5 to .7 trips per unit. Mr. Olvany asked whether age-targeting the units would impact potential traffic. Mr. Galante replied that this would have no effect—Kensett 1 was also

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age-targeted. Mr. Olvany asked if overall increases in traffic since 2007 would impact Kensett 2. Mr. Galante said that traffic increases might impact Hoyt Street, and delay coming off of Wakemore Street (the side street).

Reese and Christian Green of 35 Wakemore Street then spoke. They mentioned that they are opposed to this application. Their concerns included, but were not limited to, airborne dust during the construction process. They noted that Kensett is now using a dust alarm.

Mr. Oleg Starovoitov of 22 Wakemore Street asked about Kensett 2 future maintenance. There is now a 36" pipe from Wakemore Street to Kensett 1. Mr. Olvany asked if there is now a Wakemore Street Homeowners Association. Mr. Canas asked if Kensett will maintain that part of the Wakemore Street system. Mr. Watson noted that the Wakemore Street drainage system does not treat water—it only conveys it. Mr. Watson said that Kensett 2 water comes out of the Wakemore Street system to Cultecs. Mrs. Cameron said that the Wakemore Street property owners need to maintain their drainage system. Mrs. Cameron noted that the possibility of removing the plantings along the south Kensett 1 property line and installing Cultec units in that location may not help.

Mr. Olvany said that if the project was approved, there are about 2.5 acres not going towards Wakemore Street, and any water that currently flows west would flow north through Kensett.

Mr. Patrick Hirscht of 17 Wakemore Street said that he is not opposed to this application. He said that promises/assurances were made as part of the original application by Kensett representatives regarding: age-targeting; the size of the units; and the paving of the road. He has concern about the maintenance of the below market rate units, which he believed should exist onto the Kensett property, not onto Wakemore Street. Mr. Olvany asked Mr. Hirscht whether there was now a Wakemore Street Homeowners Association. Mr. Hirscht replied that there was not.

Mr. Joe Roxe said that although he now lives elsewhere in Darien, he is aiming to buy a unit at Kensett 1. He believed that the Kensett units fulfill a need in Town, for "empty-nester housing".

At about 10:10 p.m., Chairman Cameron noted that it appeared highly unlikely that some of the remaining agenda items would be heard this evening. Thus, she wanted to open each of those three public hearings and continue them to another night.

**Coastal Site Plan Review #304, Flood Damage Prevention Application #345, Eleven Baywater Drive LLC, 11 Baywater Drive.** Proposal to construct additions and alterations to the existing residence; install HVAC units on a platform; and perform related site development activities within regulated areas. The subject property is located on the south side of Baywater Drive approximately 25 feet east of its intersection with Waverly Road, and is shown on Assessor's Map #55 as Lot #101 & #102 in the R-NBD Zone.

Project architect Lance Zimmerman was present on behalf of the applicant, and agreed to continue the public hearing to February 3, 2015 at 8pm in Town Hall.

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**Land Filling & Regrading Application #342, John Gallagher & Meredith Re, 18 Raymond Heights.** Proposing to fill and regrade the property and install stormwater management in association with the construction of a replacement single-family residence, and to perform related site development activities. The property is situated on the east side of Raymond Heights approximately 315 feet north of its intersection with Raymond Street and is shown on Assessor's Map #36 as Lot #126-1, and is located in an R-1/5 Zone.

Project engineer Doug DiVesta was present on behalf of the applicant, and agreed to continue the public hearing to February 3, 2015 at 8pm in Town Hall.

**Land Filling & Regrading Application #341, J. Scott Lesko, 16 West Elm Street.** Proposing to regrade the back and side yards and install stormwater management in association with additions and alterations to the existing residence, and to perform related site development activities. The subject property is located on the south side of West Elm Street approximately 400 feet west of its intersection with Noroton Avenue, and is shown on Assessor's Map #21 as Lot #171 in the R-1/3 Zone.

Project engineer Doug DiVesta was present on behalf of the applicant, and agreed to continue the public hearing to February 3, 2015 at 8pm in Town Hall.

Chairman Cameron then asked if anyone else would like to speak regarding the **Kensett/Sun Homes application.**

Attorney Wilder Gleason said that all of the units in Kensett have a basement, except for the "Piper" style units. He said that basements are habitable. Mr. Sini said that a recently adopted Regulation of the Commission does not include basements in floor area calculation. Mr. Gleason then asked the Commission if this is what they bargained for, since 1/3 of the Kensett 1 units have been sold to owners age 30-40. Mr. Sini said that the Commission cannot discriminate on who purchases units. Mr. Gleason believed it would be more appropriate to require first floor master bedrooms, and/or if the master bedroom is on the second floor, to require an elevator. In response to a question, Mr. Gleason said that he represents Brian Hynes and Oleg Starovoitov. He then distributed a 1-20-2015 Homeowners Requests document. He asked that there be annual filing to ensure proper stormwater maintenance. There should be a size limit and bedroom limit. There should be emergency access only to Wakemore, not a through road. The Commission should require the paving of Wakemore Street by a certain date.

Mr. Sager Shah said that he now lives in Kensett 1. He has concern about safety and traffic. Ms. Elizabeth Gertz said that she also lives in Kensett 1. She is concerned about maintenance of the below market rate units and the surrounding area. Mrs. Cameron said that there will need to be a mechanism in the Darien Land Records for the below market rate units. Mr. Gleason concluded by suggesting to the Commission that they deny the project without prejudice, and then modify the Regulations.

Mr. Ginsberg said that the Commission is still awaiting a report from the Environmental Protection Commission, and thus, it would be best if the public hearing not be closed tonight. He said that the

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next public hearing date would be February 3, 2015 at 8pm. in Town Hall. It was agreed to continue this matter to that date and time.

At about 10:35 p.m., Chairman Cameron read the following agenda item:

**Special Permit Application #285, Land Filling & Regrading Application #213-A, Anthony & Elizabeth Minella, 53 Horseshoe Road.** Proposing to construct a 60' x 100' sports court with associated lighting; along with a related structure attached to the existing residence; install related stormwater management; and to perform related site development activities. The subject property is located on the southwest side of Horseshoe Road approximately 400 feet west of its intersection with Inwood Road, and is shown on Assessor's Map #3 as Lot #23 in the R-2 Zone.

Lance Zimmerman, project architect, was present on behalf of the applicant. He distributed copies of a photometric plan, and showed Site Plan S-1 to the Commission. He noted that a proposed garage/locker room will be connected to the house. A 100' x 60' sport court will be used year round for activities such as tennis, basketball, hockey and ice skating. A pool house is proposed on the south side of the property, but does not need special permit approval. A separate septic system will be needed for that aspect of the project.

A series of 18'-20' arborvitae will be continued along the north and east property line as shown on Site Plan S-1. Mr. Zimmerman noted that the McDermotts at 19 Horseshoe now have a sport court near the Minella side of their property.

A drainage and lighting plan was referenced. It was noted that the proposed sport court will have four lights--two on each side. Each light will be sixteen feet high. The proposed court is two feet lower than the existing grade at elevation 97. There will be some regrading involved. This will include at least fifteen trucks--12 trucks to bring in fill, and three trucks for other materials. The sport court meets the required setbacks. The proposed lights will be blocked by the proposed building and the proposed arborvitae. Section 405a of the Darien Zoning Regulations allows this use by Special Permit. Mr. Zimmerman referred to the four proposed compressors for the ice rink.

Mr. Zimmerman said that the proposed stone wall and trees will keep the noise down. Four trees will be removed as part of this proposal. The property owner may need one more geothermal well. Mr. DiDonna asked whether there would be any detrimental effect of this project. Mr. Zimmerman responded that they will be planting many trees to minimize impacts of noise. He said that this is a 2.5 acre site. There is a detention system for the pool house. The lighting plan shows 0.7 candlepower at the property lines. Mr. DiDonna asked whether this would generate glare. Mr. Olvany asked whether there would be music or loudspeakers. Mr. Zimmerman responded that he would have to talk to the owners—they are looking for feedback from the Commission this evening. Mr. Sini believed that more lighting detail was needed. Mrs. Cameron agreed, stating they should be able to compare it to other areas that are lit.

Mrs. Alice Watson, of Horseshoe Road, then spoke. She said that she would like additional time to hire an engineer to review this application. She said that there have been previous requests for this property, including the house construction in 2007 and filling and regrading in 2008. Her concerns include, but are not limited to, stormwater runoff.

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Mr. Lawrence Noble of Horseshoe Road, said that he is the most directly affected by this proposal. He has no concern, and is not worried about lights or drainage. Mr. Sini then asked about the hours of use of the sport court. Mr. Noble responded that a 9pm or 10pm time limit would be okay by him. Mr. Olvany asked if he had any concerns about property values.

Mr. Tony Minella, the property owner, then said that he will look at improved stormwater management in response to concerns presented by the neighbors this evening.

It was agreed to continue the public hearing on this matter to February 24, 2015 at 8pm in Darien Town Hall.

At about 11:07 p.m., Chairman Cameron read the following general meeting agenda item:

**GENERAL MEETING**

**Mandatory Referral #1-2015, Knobel Hill, LLC, 40 Locust Hill Road.**

Request for an adjustment of the boundary of Locust Hill Road and the right-of-way along the northerly boundary of the 40 Locust Hill Road property, the property at the corner of Settler's Trail. *DEADLINE TO ISSUE REPORT IS: 1/30/2015.*

Mrs. Cameron noted a typographic error in the draft report. Mr. Olvany said that he would like to note that a surveyor should specifically call out the distance from the centerline to the property line on the other side of Locust Hill Road prior to submitting the formal application for site plan and special permit approval to the Commission. Commission members agreed that rather than including this in the report, this statement would be more appropriate to include in the cover letter to Knobel Hill LLC. Mr. Sini then made a motion to approve the report as written with the one typographical correction. That motion was seconded by Mr. Voigt, and was approved by a vote of 4-0, with one abstention (Mr. DiDonna). The approved report read as follows:

**DARIEN PLANNING AND ZONING COMMISSION  
C.G.S. SECTION 8-24 MANDATORY REFERRAL REPORT  
KNOBEL HILL, LLC, 40 LOCUST HILL ROAD  
JANUARY 20, 2015**

**Mandatory Referral #1-2015, Knobel Hill, LLC, 40 Locust Hill Road.**

Request for an adjustment of the boundary of Locust Hill Road and the right-of-way along the northerly boundary of the 40 Locust Hill Road property, the property at the corner of Settler's Trail.

The subject request consists of two parts:

- 1) Dedication to the Town of Darien of 1,089+/- square feet of right-of-way adjacent to Locust Hill Road.
- 2) Town discontinuation of 417+/- square feet of right-of-way on Locust Hill Road.

Materials submitted in support of this request include: a December 26, 2014 letter from Maslan Associates revised January 12, 2015; a "Right of Way Survey Depicting Land to be Conveyed to and From Knobel Hill, LLC 40 Locust Hill Road and the Town of Darien" by William W. Seymour & Associates, dated September 26, 2014; Site Plan Knobel Brothers LLC, 8-1/2" x 11", by DiVesta



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Civil Engineering Associates Inc., Drawing No D-2; and Section B-B Knobel Brothers LLC, 11" x 17", by DiVesta 01/09/15, Civil Engineering Associates Inc., Drawing No D-1. A number of photographs of the vicinity and related excerpts from the Town Plan of Conservation & Development were also submitted in support of the request.

While the dedication to the Town and discontinuation of right-of-way are related issues, they are addressed separately herein.

1) **Dedication to the Town of 1,089+/- square feet of right-of-way adjacent to Locust Hill Road.**

The 1,089+/- square feet to be received by the Town of Darien is shown on Parcel 'Y' on the submitted Right of Way Survey. It is located generally parallel to Locust Hill Road, for about 89 feet. This area now contains a stone wall, which, based upon the photographs submitted, impedes sight lines looking from Settler's Trail west along Locust Hill Road. In this vicinity, the right-of-way of Locust Hill Road is less than the usual fifty feet wide. As part of a December 1971 subdivision approval (Subdivision Application #472), the Commission required this area as "Reserved for future road widening purposes". This was specifically noted on Map #3651 in the Darien Land Records. The formal acquisition of this land by the Town of Darien will allow the Town to then have a fifty foot wide right-of-way in this vicinity. The applicant has also assured the Commission that prior to deeding the land to the Town, that the existing stone wall along Locust Hill Road and part of Settler's Trail near the intersection would be removed, and the land in the area of the corner of Settler's Trail and Locust Hill Road will be regraded to improve the sight lines. The submitted Site Plan and Section B-B show how the wall can be removed and the area regraded. Thus, the benefit to the Town of Darien of this acquisition is two-fold: to allow the Town to have a more regular sized right-of-way along Locust Hill Road, and a safety improvement in terms of the intersection of Settler's Trail and Locust Hill Road (removal of the stone wall and associated regrading). It is noted that due to the amount and location of the proposed regrading, a formal application to the Planning and Zoning Commission and their review and approval will be required prior to implementation.

2) **Town discontinuation of 417+/- square feet of right-of-way on Locust Hill Road.**

The second part of the referral is for the Town to formally discontinue part of the Locust Hill Road right-of-way (shown as Parcel 'X' on the submitted Right of Way Survey). This is a 417+/- area between an existing stone wall on the subject property and the paved area of Locust Hill Road. In this area, the Locust Hill Road right-of-way is greater than fifty feet in size. Town public road right-of-ways are usually fifty feet wide. The result of this release/discontinuation, along with the associated formal dedication noted above, is a consistent fifty foot right-of-way of Locust Hill Road in this vicinity.

**Summary**

After reviewing the submitted information, the Commission hereby finds that both the Dedication of 1,089 square feet of right-of-way adjacent to Locust Hill Road, and the Town discontinuation of 417+/- square feet of right-of-way on Locust Hill Road are consistent with the Town Plan of Conservation & Development, as amended.

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Chairman Cameron then read the following agenda item:

*Discussion, deliberation and possible decisions on the following two applications:*

**Special Permit Application #282, Carmen Molinos, 16 Stony Brook Road.** Proposing to construct a 30' x 60' sport court and to perform related site development activities. *PUBLIC HEARING CLOSED: 11/25/2014. DECISION DEADLINE: 1/29/2015.*

Mr. Olvany proposed a change to paragraph 7 and condition D in the draft resolution. Mr. Olvany then made a motion to adopt the resolution with those changes. That motion was seconded by Mr. Sini, and approved by a vote of 4-1, with Mrs. Cameron voting against. The adopted resolution reads as follows:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
January 20, 2015**

Application Number: Special Permit Application #282

Street Address: 16 Stony Brook Road  
Assessors Map #18, Lot #85

Name and Address of Property Owner: Carmen Molinos  
And Applicant: 16 Stony Brook Road  
Darien, CT 06820

Name and Address of Kevin Florin, Esq.  
Applicant's Representative: Nedder & Associates, LLC  
3 Parklands Drive, Suite 201  
Darien, CT 06820

Activity Being Applied For: Proposing to construct a 30' x 60' sport court and to perform related site development activities.

Property Location: The subject property is located on the east side of Stony Brook Road approximately 530 feet north of its intersection with West Avenue.

Zone: R-1

Date of Public Hearing: October 28, 2014 continued to November 25, 2014

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices  
Dates: October 17 & 24, 2014

Newspaper: Darien News

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Date of Action: January 20, 2015

Action: GRANTED WITH STIPULATIONS  
AND MODIFICATIONS

Scheduled Date of Publication of Action:  
January 30, 2015

Newspaper: Darien News

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 400 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plans, and the statements of the property owners/applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The subject application is to construct a 30' x 60' sport court and to perform related site development activities. The subject property is 2.35+/- acres. The proposed multi-purpose seasonal sports court is an accessory use requiring a Special Permit under Section 405b of the Darien Zoning Regulations. The submitted plans show wetlands in two areas of the property: near the north property line, and in the southeast corner of the property.
2. No testimony was taken at the October 28 meeting. At that meeting, the public hearing was opened and immediately continued to November 25, 2014. At that November 25, 2014 public hearing, Attorney Michael Nedder explained that the property owners wish to install a proposed sport court that will measure 30 feet by 60 feet, and a viewing area measuring 15 feet by 20 feet on a 2.3 acre site. He also responded to the staff memo dated October 24, 2014 noting a number of issues regarding the application. The applicant submitted revised plans dated 11/14/14 in response to those concerns. The submitted 11/14/14 plan shows the closest point of the sports court 53.5 feet from the edge of the wetland area in the southeast corner of the property.
3. Attorney Michael Nedder said that they did investigate other locations on the site because the proposed location will require the removal of some trees. He said that the other locations were not as desirable for the applicants because they would eliminate some of the grass play area. They will be installing a wooded buffer area consisting of spruce trees to separate the sports court from the neighboring properties.
4. Attorney Nedder said that there will be no permanent or temporary light fixtures of the sports court and that it will be used for basketball and tennis and roller hockey and similar activities. No additional lighting will be installed on the house and directed toward the sports court.

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5. Professional engineer Steve Trinkaus said that the existing rain garden on the rear portion of the property was designed by him as part of a prior application for this property, but was not built in accordance with the approved plans. In fact, it was noted that the plantings in the rain garden on the property have all died. The current proposal for a sports court involves rebuilding and expanding the rain garden area to make sure that it accommodates stormwater from the previously approved addition to the house, the sports court, as well as the proposed paved viewing area adjacent to the sports court.
6. At the public hearing, it was noted that there is no Certificate of Occupancy for the house addition that was built years ago. Builder Robert Calve responded that his company was hired to build the addition, but they were not the landscaper and they were not responsible for the construction of the rain garden. He understands that the rain garden needs to be completed before the Certificate of Occupancy can be obtained.
7. With respect to the regrading in the area of the sports court, it was mentioned that there is a large boulder that will need to get removed, but the builder, Mr. Calve, believed that it is not solid ledge. Mr. Trinkaus agreed that the rock appears to be a large surface rock, not part of a ledge. He said that no blasting is needed for the proposed sports court or viewing area. He noted that a swale will be installed to direct water from the sports court to the rain garden and the regrading is outside EPC's review and jurisdiction area.
8. The Environmental Protection Officer sent memos dated October 15, 2014 and November 20, 2014 regarding the application. Plans were revised in response to the first memo, and in the November 20, 2014 memo, one recommendation is for a rigid fence such as chain link be installed inside the silt fence (to be revised to be no closer to the wetlands than fifty feet) to avoid potential intrusion into the regulated area. The applicant has agreed to this.
9. At the public hearing, the Commission members felt that it would be necessary to get the rain garden planting properly completed prior to the Certificate of Occupancy for the house addition. Commission members felt that a Performance Bond might be necessary.
10. The Commission notes with respect to the drainage system around the court, the need for the applicants to file a Notice of Drainage Maintenance Plan outlining the protocol for maintenance of the proposed and installed drainage system in the Darien Land Records. This will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts.
11. At the public hearing it was noted that the applicant's submitted Arborist Report indicates that 10 large trees will need to be removed for the sport court installation. Mr. Trinkaus said that the three or four large trees need to be removed and the other trees were smaller. He said that they are adding in ten spruce trees as screening to the south of the sports court. In response to questions, he said that four or more additional spruce trees could be added on the east side of the proposed sports court to provide additional screening for that neighbor to the east.
12. At the public hearing, the applicant noted that there is proposed to be ten spruce trees on the south side of the proposed sport court. Other landscaping now exists between the proposed court and the northerly property line, and one spruce exists to the south of the sport court.

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These existing trees will provide some screening between the neighbors and the area of the proposed sports court. The Commission finds that the ten additional trees to be planted to the south of the sports court and the four to be planted to the east of the sports court satisfy the Zoning Regulations.

13. The sports court, as designed, complies with all yard setbacks and building coverage maximums in the Zoning Regulations. No members of the general public submitted comments for the record or commented at the public hearing.
14. The site plan has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
15. The location and size of the use, the nature and intensity of the proposed operations involved in or conducted in connection with it, the size of the site in relation thereto, and the location of the site with respect to streets giving access to it, are such that the application is in harmony with the orderly development of the district in which it is located.
16. The location and nature of the proposed use are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
17. The design, location, and specific details of the proposed use and site development will not adversely affect safety in the streets nor increase traffic congestion in the area, nor will they interfere with the patterns of highway circulation in such a manner as to create or augment unsafe traffic conditions between adjoining developments and the district as a whole.
18. With the specific conditions outlined herein, the proposal conforms to the standards for approval as specified in Section 1005(a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE, BE IT RESOLVED that Special Permit Application #282 is hereby modified and granted subject to the foregoing and following stipulations, conditions, modifications and understandings:

- A. Construction of the proposed sports court and related plantings and stormwater management shall be in accordance with the following plan submitted to the Commission, as required to be revised herein:
  - Site Plan for Sport Court Prepared for Mark Deangelis 16 Stonybrook Road, by Trinkaus Engineering, LLC, scale 1"=20', dated October 3, 2014 and last revised 11/14/14.

The required plan changes are:

- 1) Modify the location of the silt fence to be no closer than fifty (50) feet from wetlands. The submitted plans show the silt fence within an EPC-regulated area, and would require a permit from EPC.
- 2) a temporary chain link fence shall be installed inside the silt fence where the work is five feet or less to the upland review area, as an additional precaution; and
- 3) as agreed to by the applicant's engineer during the public hearing, four or more additional spruce trees shall be added on the east side of the proposed sports court to provide additional screening for that neighbor to the east.

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Revised plans shall be submitted by March 20, 2015, and if acceptable and approved, shall then be submitted with the Zoning and Building Permit application for the sports court.

- B. In order to resolve the existing issue with the rain garden, prior to applying for a Zoning and Building Permit for the sports court, or any tree cutting or regrading in the area of the sports court, the property owner shall:
1. Install sediment and erosion controls around the rain garden work area as noted in Condition C, below.
  2. Install the proposed expanded rain garden and fully plant it in accordance with the plans shown in Condition A, above. This work shall be done prior to installing the sport court so that the vegetation is established before runoff is directed into it.
  3. Obtain a Certificate of Occupancy (CO) for the house addition, which was completed a few years ago, but never received a Certificate of Occupancy.
  4. Submit the required performance bond and surety as noted in D below.
  5. Install the temporary chain link fence and sediment and erosion controls in the vicinity of the proposed sports court.
  6. Obtain the Zoning and Building Permits for the sports court and only then commence the excavation and site work for the sports court.
- C. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the 11/14/14 "Site Plan for Sport Court", as well as the chain link fence required in Condition A above, and any additional measures as may be necessary due to site conditions, including the tree protection filling as mentioned above. Those sediment and erosion controls shall be installed to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of the rain garden installation/expansion work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans, and as needed by site conditions. All erosion control measures must be maintained until the disturbed areas are stabilized.
- D. In order to assure the survival and healthy condition of the plants, and their replacement if they do not survive, as well as the proper functioning of the rain garden, prior to the issuance of a Zoning or Building Permit for the sports court, the applicant is required to post a \$5,000 performance bond for the plantings within the rain garden. This shall be in place for two years from the date of the CO for the house addition, as required in Condition B, above. After one planting season, the applicant may request that up to ½ of the bond be returned, if in the determination of Planning and Zoning staff, the plantings have survived, and the rain garden is functioning as designed. Two years after the completion of the rain garden and planting, the applicant may request the return of the remaining balance of the bond. If in the determination of the Planning and Zoning staff, the plantings have survived and thrived, and the rain garden is functioning as designed, ½ of the bond may be returned. A bond is being required only for the rain garden and the re-planting of that area. No performance bond is needed for the installation of the required screening trees adjacent to the sports court.
- E. The proposed sports court construction does not involve the installation of any lights and no temporary or permanent lighting is approved.

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- F. At the public hearing, in response to questions, the applicant's experts confirmed that no blasting or hoe-ramming will be done as part of this project, and that all rock(s) present will be removed using a backhoe. The Commission hereby requires, as a condition of this approval, that there be no blasting or hoe-ramming done on-site. If, during the construction process, it is determined that blasting or hoe-ramming will be needed, the applicant shall return to the Commission for formal review and action on such a request.
- G. The plan submitted with the application includes the installation of a drainage system to manage the additional runoff to be created by the impervious surface. This drainage system must be installed prior to the completion of the project and/or use of the sports court.
- H. The approved plans show the ten spruce trees to the south of the proposed sport court. It is the responsibility of the owner to maintain that landscaping to the south of the court in good condition, and replace any landscaping that is dead, dying, or diseased with the same landscaping species and sizes. The goal of the landscaping is to provide visual screening of the sports court from the adjacent property to the south and to a lesser extent, to minimize the noise from people playing on the court.
- I. By March 20, 2015 (within the next 60 days) a Drainage Maintenance Plan shall be submitted to the Planning and Zoning Office for review and action by the Director of Public Works and the Planning and Zoning Director. After approval by the two Directors, it shall be filed in the Planning & Zoning Department. The Drainage Maintenance Plan shall require the property owner and all subsequent property owners of 16 Stony Brook Road to maintain the on-site drainage facilities, and will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts. A Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records by the owner as well, within the next 60 days of this approval and prior to the start of any filling or regrading work around the house.
- J. Prior to the issuance of a Certificate of Zoning Compliance and/or use of the sports court:
  - 1) A final "as-built" survey from a licensed land surveyor is hereby required to certify that the rain garden size, shape, and location and the sports court construction are in compliance with the approved plans, including the side yard setback for the court; and
  - 2) A Professional Engineer shall certify in writing that the rain garden, its associated plantings, and other drainage work has been properly completed in accordance with the approved plans.
- K. The applicant shall install the drainage system as shown on the submitted plans. The applicant/property owner shall have the continuing obligation to make sure that storm water runoff and drainage from the site will not have any negative impacts upon the adjacent properties. If such problems do become evident in the future, the owner of the property shall be responsible of remedying the situation at their expense and as quickly as possible.
- L. In evaluating this application, the Planning & Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.

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- M. The granting of this Special Permit does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. Zoning and Building Permits are required prior to the construction of the sports court.
- N. This permit shall be subject to the provisions of Section 1009 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action by (January 20, 2016). This may be extended as per Section 1009.

All provisions and details of the plan, as required to be modified herein, shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. Within sixty days of this action, and prior to the issuance of a Zoning or Building Permit, a Special Permit form and Notice of Drainage Maintenance Plan both must be filed in the Darien Land Records or this approval shall become null and void.

Due to the late hour, the Commission did not get to the following agenda item:

**Special Permit Application #277-A/Business Site Plan #248, Day Street Development, LLC, 13 Grove Street.** Request for Le Boudoir, a personal service use, for a 1,250+/- square foot portion of the first floor of the building at 13 Grove Street. *PUBLIC HEARING CLOSED: 11/25/2014. DECISION DEADLINE: 1/29/2015.*

There being no further business, the following motion was made: that the Commission close the meeting. The motion was made by Mr. Olvany, seconded by Mr. Sini and unanimously approved. The meeting was adjourned at 11:15 P.M.

Respectfully submitted,

Jeremy B. Ginsberg  
Planning & Zoning Director

01.20.2015min